

REMARKS

Claims 1–10, 16 and 17 are pending in this application. By this Amendment, claims 1 and 6 are amended, claims 12–15 are canceled and claims 16 and 17 are added. Support for the amendments to claims 1 and 6 can be found, for example, in claims 12–15, as the amendments merely incorporate the subject matter of the canceled claims. Support for new claims 16 and 17 can be found, for example, on page 19, lines 10–25, and Fig. 3 of the original specification. No new matter is added. Applicants respectfully request reconsideration and prompt allowance in view of at least the following remarks.

The Office Action provisionally rejects claims 1, 6 and 11 on the ground of non-statutory obviousness-type double patenting over claim 1 of U.S. Patent Application No. 10/634,828, which subsequently has matured into U.S. Patent No. 7,417,980. Applicants consider this rejection moot in view of the amendments to claims 1 and 6 that incorporate the subject matter of claims 12–15, which were not provisionally rejected for non-statutory obviousness-type double patenting. Applicants respectfully request withdrawal of the rejection.

The Office Action rejects claims 1–10 and 12–15 under 35 U.S.C. §103(a) over U.S. Patent No. 7,061,901 (Shnitzer) in view of U.S. Patent No. 7,023,987 (Prentice). The rejection of claims 12–15 is moot in view the claims being cancelled. Applicants respectfully traverse the rejection to claims 1–10.

The Office Action concedes that Prentice does not explicitly discuss audio signals used to check if the Internet telephony application software has been launched (Office Action page 9). To overcome this concession, the Office Action states "[i]t would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate the above teachings into the teachings of Shnitzer and Prentice in order to have a more efficient system and to check for possible re-launching [sic] the software in case of technical

difficulty" (Office Action at page 9). The "above teachings" referred to in this context are the teachings of the current application. Therefore, the Office Action's logic is clearly based on impermissible hindsight reasoning because it is relying on the teaching of the current application, for determining what would have been obvious and combining this teaching with the alleged teachings of Shnitzer and Prentice to establish obviousness. *See* M.P.E.P. §2145(X.A).

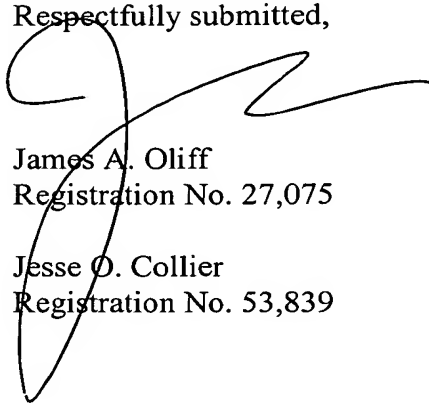
Prentice fails to teach or suggest "the computer control means further outputting a first command to the computer to check if the Internet telephony application software has been launched," as recited in claims 1 and 6. Prentice also fails to teach or suggest "the computer control means outputting a second command in the form of an audio signal to the computer to launch the Internet telephony application software," as recited in claim 1 and 6. The Office Action cannot rely on the teaching of the current application in an obviousness rejection to allege that it would have been obvious to modify Shnitzer and Prentice to teach or suggest the above recitations without some other evidence besides the teaching of the specification.

Because there is no other evidence to establish a *prima facie* case of obviousness, claims 1 and 6 are patentable over the cited references. *See* M.P.E.P. §§ 2141, 2143. As claims 1 and 6 are patentable, dependent claims 2–5, 7–10, 16 and 17 are also patentable, at least in view of the patentability of claims 1 and 6, from which the dependent claims depend, as well as for the additional features the dependent claims recite. Accordingly, Applicants respectfully request withdrawal of the above rejection.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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JAO:KRG/jnm

Attachment:

Petition for Extension of Time
Request for Continued Examination

Date: November 17, 2008

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